

COMPLAINT INVESTIGATION SUMMARY

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| COMPLAINT NUMBER: | 1811.01 |
| COMPLAINT INVESTIGATOR: | Brian Simkins |
| DATE OF COMPLAINT: | October 1, 2001 |
| DATE OF REPORT: | October 31, 2001 |
| REQUEST FOR RECONSIDERATION: | yes/revised report November 29, 2001 |
| DATE OF CLOSURE: | November 30, 2001 |

COMPLAINT ISSUES:

Whether the North Montgomery Community School Corporation and the West Central Indiana Special Education Cooperative violated:

511 IAC 7-25-5(c) with regard to the school's alleged failure to advise the parent that an independent evaluation (IEE) would be conducted at public expense or otherwise initiate a due process hearing within ten business days of the parent's requests for an IEE on January 30 and May 11, 2001.

511 IAC 7-27-7(a) with regard to the schools alleged failure to implement the student's individualized education program (IEP) as written, specifically:

- a. Failing to conduct an independent evaluation for reading;
- b. Failing to provide identified amount of time with a teacher for the hearing impaired; and
- c. Failing to provide inservice by auditory verbal therapist.

511 IAC 7-30-1(g) with regard to the school's alleged failure to ensure that the mediation agreement reached by the parties was submitted to the case conference committee for approval.

511 IAC 7-27-7(d) and (e) with regard to the school's alleged failure to ensure that the student's IEP was no more than 12 months old and that a current IEP was in effect at the beginning of the 2001-2002 school year.

FINDINGS OF FACT:

1. The Student is twelve (12) years old and attends a local middle school (the "School"). He is eligible for special education and related services as a student with a hearing impairment.
2. The parent hand-delivered a written request for an IEE dated January 30, 2001, to the secretary of the local special education district. The school's response indicates that the parent's request was not discovered until February 22, 2001. Upon discovering the request the School sent a letter dated February 28, 2001, to the parent acknowledging the request but did not advise the parent whether an IEE would be conducted at public expense. A CCC was convened on March 7, 2001, to address a re-evaluation and the parent's request for the IEE. The School agreed to conduct an IEE.
3. The School conducted an evaluation of the Student in March and April 2001, using the Stanford 9

Achievement Test to assess the Student's abilities in reading, math, language arts, science, and social studies. The Stanford 9 offers norms for hearing impaired. The parent disagreed with the school's evaluation primarily on the grounds that it was not appropriate for assessing reading for a hearing impaired student. The parent then requested another IEE on May 11, 2001, to include another reading evaluation for hearing impaired in addition to a psycho-educational evaluation. The School agreed to conduct this IEE but, again, did not advise the parent as to whether it would be at public expense. Discussion was entertained as to out-of-state resources, specifically, institutions that could properly assess a hearing impaired student with a cochlear implant in reading in addition to conducting a psycho-educational evaluation. The Student's IEP does not require an independent reading evaluation. Agreement as to what expenses the School would pay for was finalized in a mediation agreement.

4. The school and the parent through a mediation agreement on June 5, 2001, arranged for the Student to have an IEE conducted at an out-of-state facility. The IEE was conducted on August 3, 2001, at the expense of the school. A written report was received on August 27, 2001.
5. The Student's IEP, dated October 17, 2000, indicates he is to receive 120 minutes per day of direct services for language arts and other academic support and 90 minutes per week (three 30-minute sessions) of direct speech/language services. The Student began middle school August 14, 2001. At the parent's request on August 14, 2001, the middle school adjusted the Student's schedule to have physical education (PE) class the last period of the day in order to protect his cochlear implant sound system from being damaged by sweat from a morning PE class. The school states "[t]he revised schedule interfered with [the Student] receiving services from the [hearing impaired] teacher," especially direct science instruction as per the mediation agreement. The school admits to not being able to schedule the student with the teacher for the hearing impaired, but states "[t]he school administrator and the parent agreed that [the Student] would participate in the general education science class with a trained aide (notetaker) and consultation from the teacher of the hearing impaired." However, this change was agreed to outside of the CCC and was not incorporated into the Student's existing IEP.
6. Under other and special factors of the Student's IEP dated October 17, 2000, it is written that the school will provide auditory verbal training for staff members designated in the IEP within 30 days of the beginning of the school year. The IEP does not state that an auditory verbal therapist is to provide training. It is also stated in the mediation agreement that training on the needs of hearing impaired students with cochlear implants and teaching strategies provided by the school. An in-service training was provided by the Student's teacher for hearing impaired (also the TOR) on August 13, 2001, to six general education teachers, one speech/language pathologist, one teacher of special education and two paraprofessionals. School started on August 14, 2001.
7. The mediation agreement reached by the parties on June 5, 2001, was submitted to the CCC for approval on October 2, 2001.
8. The last complete CCC report addressing all IEP components was completed October 17, 2000, and served as the Student's IEP through June 2001. Several CCC meetings (March 7; May 11, 18, and 22; October 2, and 15, 2001) have been held to revise and update the Student's IEP. On October 2, 2001, the parent signed an interim IEP incorporating goals and services identified during the May 2001 CCC meetings, along with the agreement that the CCC would reconvene on October 15, 2001, to complete the final IEP. The duration of the October 2, 2001, IEP is through October 2, 2002. The CCC reconvened on October 15, 2001, and proposed revisions to the Student's IEP are pending parent's written consent.

CONCLUSIONS:

1. Finding of Fact #2 indicates that a response by the school to the parent's written request for an IEE dated January 30, 2001, was not made until February 22, 2001. The School's response to the parent's request for an IEE was acknowledged in a letter dated February 28, 2001, but not agreed to until a CCC meeting on March 7, 2001, and did not inform the parent whether it would be conducted at public expense. The School agreed to the second parent request for an IEE dated May 11, 2001, at a CCC meeting convened on May 18, 2001. Again, the parent was not advised as to whether the IEE would be at public expense. The school's response to the first request for an IEE was not within the required ten business days nor did the School properly advise the parent upon both requests whether an IEE would be conducted at public expense. A violation of 511 IAC 7-25-5(c) is found.
2. Finding of Fact #3 and #4 indicate that an IEE for reading was conducted at public expense on August 3, 2001. The IEP did not require an independent reading evaluation. The IEE was a fulfillment of the parent's request. No violation of 511 IAC 7-27-7(a) is found.
3. Finding of Fact #5 indicates the Student's teacher for the hearing impaired did not provide services as specified in the IEP. The reported agreement to change the Student's science instruction from a teacher for the hearing impaired to the general education classroom was not incorporated into the IEP. The school's agreement to change the Student's class schedule and place the student in a general education science class does not excuse the lack of services by the hearing impaired teacher, as those services remained a part of the agreed-upon IEP in effect at that time. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to these services at that time. However, because the CCC has subsequently convened and revised the Student's IEP, no additional corrective action is needed.
4. Finding of Fact #6 indicates that an in-service on auditory verbal training and strategies on meeting the needs of hearing impaired students with cochlear implants was conducted on August 13, 2001. No violation of 511 IAC 7-27-7(a) is found with respect to the in-service training.
5. Finding of Fact # 7 indicates that the mediation agreement dated June 5, 2001, was approved by the CCC on October 2, 2001. No violation of 511 IAC 7-30-1(g) is found.
6. Finding of Fact #8 indicates that no IEP was in effect at the beginning of the 2001-2002 school year. A new IEP was required by August 14, 2001. A violation of 511 IAC 7-27-7(e) is found.
7. Finding of Fact #8 indicates that the Student's previous IEP was completed on October 17, 2000. An interim IEP was developed and consented to by the parent on October 2, 2001. Therefore, no violation of 511 IAC 7-27-7(d) is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The North Montgomery Community School Corporation and the West Central Indiana Special Education Cooperative shall:

- 1a. Review and, if necessary, revise the School's procedures for responding to a parent's request for an independent educational evaluation to ensure that a written response is provided to the parent within ten (10) business days of the date the School receives the parent's request. The procedures must also ensure that the School includes one of the following in its written response: (1) the School will pay for the requested independent educational evaluation, or (2) the School believes its evaluation is appropriate and will initiate a due process hearing to have an independent hearing officer determine whether an independent educational evaluation at the School's expense is warranted. A copy of the School's written procedures shall be submitted to the Division no later than November 30, 2001.
- 1b. Send a written reminder to appropriate personnel regarding the procedure for handling a parent's request for an independent educational evaluation. A copy of the memorandum and a list of memorandum recipients shall be submitted to the Division no later than November 30, 2001.
2. The original corrective action requiring submission of a signed IEP is rescinded in light of the submission of the October 2, 2001, IEP that is signed by the parent and effective through October 2, 2002. This does not preclude the CCC from meeting to revise the IEP as appropriate throughout the school year.